

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

CALVIN TAYBORN, III

PLAINTIFF

V.

NO: 2:12CV00102 JLH/HDY

WENDY KELLY *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff Calvin Tayborn, III, a former Arkansas Department of Correction inmate, filed a *pro se* complaint on May 31, 2012. On November 27, 2012, the Court entered an order granting in part a motion for sanctions filed by Defendants Don Ball, Geraldine Campbell, and Denise Strickland, and directed Plaintiff to pay them \$166.45, and to present to the Court evidence of such payment within 30 days (docket entry #32). The \$166.45 represented the amount of court reporter fees incurred by Ball, Campbell, and Strickland, for a scheduled deposition that Plaintiff failed to attend. Plaintiff failed to provide evidence that he paid the \$166.45, and his claims against Ball, Campbell, and Strickland, were dismissed (docket entry #34).

On February 15, 2013, Defendant Wendy Kelley filed a motion for sanctions and brief in support (docket entries #36 & #37), asserting that her attorney had appeared at the same deposition, and seeking as a sanction the dismissal of Plaintiff’s claims. Although Plaintiff has been directed to file a response, and has been provided additional time to do so (docket entry #38), he has not responded. Accordingly, Kelley’s motion for sanctions should be granted to the extent that

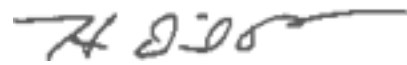
Plaintiff's claims against her should be dismissed without prejudice.

The Court notes that certain Does remain unnamed and unserved. On January 24, 2013, Plaintiff was ordered to provide names for any Doe Defendants within 30 days, along with a brief summary of his claims against each individual, and he was warned that his failure to provide the information within 30 days would result in the recommended dismissal of his claims against the Does (docket entry #35). Although more than 30 days have passed, Plaintiff has not responded. Accordingly, Plaintiff's claims against the Does should also be dismissed without prejudice. *See* Fed.R.Civ.P. 4(m) (providing for the without prejudice dismissal of action as to individual Defendant if service not made within 120 days of filing of complaint).

IT IS THEREFORE RECOMMENDED THAT:

1. Defendant Wendy Kelley's motion for sanctions (docket entry #36) be GRANTED to the extent that Plaintiff's claims against her be DISMISSED WITHOUT PREJUDICE.
2. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE.
3. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 29 day of March, 2013.



UNITED STATES MAGISTRATE JUDGE